IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 475 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JOSHUA NAPOLIAN MARTINS

Versus

VERONICA D/O WILLINGDON THAKORE

Appearance:

MR NIGAM R SHUKLA for Petitioners

MR BM GUPTA for Respondent No. 1

Mr K G Sheth, APP for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 26/04/2001

ORAL JUDGEMENT

The petitioners above named being the original accused before the learned Magistrate have preferred this Revision Application under Section 397 of the Criminal

Procedure Code, 1973 (for short, 'the Code') challenging the judgment and order dated 16.7.1999 recorded by the learned Addl.Sessions Judge, Ahmedabad (Rural) in Criminal Revision Application No.66/99 filed by the contesting respondent no.1 herein.

2. It appears from the proceedings of this Revision that the contesting respondent no.1 has filed FIR before Satellite police station registered as I.C.R No.0370/97 against the petitioners above named for offence punishable under section 498-A, 294-B and 323 read with section 114 of IPC. After the aforesaid FIR was investigated, the investigating police agency submitted a report to the learned Judicial Magistrate First Class, Ahmedabad (Rural) stating that 'B' Summary may be granted. On hearing the concerned parties, the learned Magistrate found that this was a case in which 'B' summary should be granted without prosecution. Therefore, the learned Magistrate passed an order dated 5.6.1999 granting 'B' summary without prosecution. Feeling aggrieved by the said order of the learned Magistrate, the contesting respondent being the original informant had filed the aforesaid Revision being Revision No.66/99 before the Sessions Court. The learned Addl.Sessions Judge, considered the said Revision and after hearing the parties, he was pleased to allow the said Revision of the contesting respondent. He was also pleased to set aside the aforesaid order of the learned Magistrate. The learned Addl.Sessions Judge was further pleased to direct that the prayer of the police investigating agency for 'B' summary without prosecution is rejected. The learned Addl.Sessions Judge further directed the learned Magistrate to treat the cross objections of the contesting respondent as complaint and to proceed ahead with the said matter in accordance with the provisions of Chapter 16 and 17 of the Code as stated in 1972 GLR 471.

3. Feeling aggrieved by the said judgment and order of the learned Sessions Judge, the petitioners have preferred this Revision before this Court under section 397 of the Code. It has been contended here that the learned Addl.Sessions Judge has not applied his mind to the facts and circumstances of the case and the judgment and order of the learned Sessions Judge are illegal and deserve to be set aside. It is, therefore, prayed that the present Revision be allowed and the aforesaid order of the learned Sessions Judge be quashed and set aside.

4. Rule was issued. Mr B M Gupta, learned Advocate appears on behalf of contesting respondent no.1-original

informant, whereas, Mr K G Sheth, learned APP appears for respondent no.2-State. I have heard the arguments advanced on behalf of the parties and have perused the papers of this Revision.

5. If we go through the judgment of the learned Addl.Sessions Judge placed at Annexure 'A' at page 15, it is clear that the learned Judge has disposed of the said revision in nine paragraphs. It is relevant to note that upto para 6 we find narration of facts. Then para 7 shows as to what can be done in a case in which 'B' summary has been applied for and the original informant raises objection against the grant of 'B' summary. That can be found in para 7. Then we can turn to para 8. There the learned Sessions Judge has observed that the aforesaid situation arises as the learned Magistrate has four options as mentioned in para 7 of the judgment. Thereafter, he proceeded to say that in the present case, the learned Magistrate has committed illegality by accepting the prayer of the investigating police agency for issue of 'B' summary without prosecution. However, it is apparent on the face of the record that the learned Sessions Judge has given no reason for coming to that conclusion.

6. Therefore, when the judgment and orders have been passed by a Court without assigning any reason for arriving at a particular conclusion, it cannot be treated to be a judgment and order in the eye of law. Whenever a Court disposes a matter on consideration of merit, it is obligatory on his part to assign reasons for coming to a particular conclusion. In the present case, the learned Addl.Sessions Judge has come to the conclusion that the order of the learned Magistrate granting 'B' summary without prosecution is illegal but again the learned Judge has assigned absolutely no reason for arriving at the said conclusion. Then, we find that the learned Sessions Judge has turned down the prayer of the police investigating agency for 'B' summary without prosecution. No reason whatsoever has been assigned by the learned Sessions Judge for rejecting the said prayer of the police investigating agency. Then the learned Addl.Sessions Judge has also passed order directing the learned magistrate to treat the cross-objection as complaint and then proceed ahead under Chapter 16 and 17 of the Code. Even for this finding no observation has been made during the course of the judgment. It is, therefore, apparently clear that the learned Sessions Judge has allowed the said revision and set aside the order of the learned Magistrate and rejected the prayer of the Police Investigating Agency for issue of 'B'

summary without prosecution without assigning any reason.

7. In above view of the matter, when the judgment has been pronounced and a conclusion has been arrived at and if it is found that the judgment and the conclusion have not been supported by any reason, then in that event, the judgment and order cannot be treated to be legal and when the judgment and order are to be treated to be illegal, it is the duty of this Court to interfere with the said judgment and order in this Revision. Learned Advocate for the contesting respondent has argued that this is an interim order and, therefore, the Revision does not lie. It is difficult to accept the said contention. As said above, there was a report submitted by the police investigating agency. The said report was accepted by the learned Magistrate and, therefore, in that event, the petitioners were not required to face trial at all. Now that order of the learned Magistrate has been set aside and even the prayer for issuing 'B' summary without prosecution which was allowed by the Magistrate has been turned down by the learned Sessions Judge. In that view of the matter, it is not possible for me to accept the argument of the learned Advocate appearing for the contesting respondent that it is an interlocutory order and, therefore, the revision does not lie.

8. The contention of the learned Advocate for the contesting respondent is that the Revision Application under section 397 of the Code can be entertained by this court only when the accused persons are in custody. On a bare reading of section 397 of the Code, I am not in a position to accept the said argument of the learned Advocate for the contesting respondent. Even if the accused persons are not in jail, they have a right to prefer Revision and this Court or even the Sessions Court can entertain such application in Revision even when the accused persons are not in jail. The only thing is in such an event, the Courts will not be required to pass any order for suspending sentence since there is no sentence against such persons.

9. The learned Advocate for the contesting respondent has suggested that the matter can be referred back to the Mahila Police Station. On the other hand, the petitioner has objected to the said prayer and suggestion and an alternative suggestion was made by him that the matter may be remanded to the Satellite Police Station. However, when the matter is being disposed of mainly on the ground that the learned Addl.Sessions Judge

has not applied his mind, it would be in the fitness of things to remand the matter to the Sessions Court for appropriate decision on merit after giving reasonable opportunity to both the parties of being heard. I find that it is not necessary at this stage to refer back the matter to the police station and, therefore, the aforesaid suggestion and submissions made by the learned advocates for the parties for referring the matter back to Mahila police station or to the Satellite Police Station are not accepted at this juncture.

10. In the aforesaid view of the matter, it is apparently clear that the judgment and order of the learned Sessions Judge in the aforesaid revision are illegal and erroneous as they are passed without assigning any reason which clearly shows non-application of mind.

11. It has also been submitted that the present petitioners being the accused in the main matter are not the aggrieved parties and, therefore, they are not entitled to file revision application. It is very clear that the police investigating agency had submitted a report for issuing 'B' summary without prosecution. That was an order in favour of the present petitioners. The learned Magistrate had granted the said prayer and had directed that 'B' summary without prosecution be issued. That was also a report in favour of the petitioners. As stated hereinabove, if that order stands, the petitioners would not be required to face trial in the criminal case at all. The learned Sessions Judge has set aside the aforesaid order and has further rejected the prayer of the police investigating agency for issuing 'B' summary without prosecution. When the learned Sessions Judge has further directed the learned Magistrate to treat the objection of the contesting respondent as complaint and proceed ahead with respect to that complaint in accordance with Chapter 16 and 176 of the code, I am of the view that these are the orders against the interest of the petitioners and, therefore they clearly have a right to challenge the said orders by of revision. It may be added here that the learned APP attending the matter on behalf of the State supports the arguments of the learned Advocate for the petitioner and he has suggested that the matter may be remanded to the Sessions Court for decision on merit since the learned Sessions Judge has not applied his mind while disposing the Criminal Revision Application before him.

12. In the result, this revision application is

allowed. The judgment and order of the learned Addl.Sessions Judge in the impugned revision application are quashed and set aside. The matter is remanded to the Sessions Court, Ahmedabad (Rural) for deciding the said Revision afresh on merit after giving reasonable opportunity of being heard to the parties.

Rule is made absolute as aforesaid.

26.4.2001 [D P Buch, J.]
msp